

September 9, 2022

Via ECF

Honorable Lorna G. Schofield
 U.S. District Court
 Southern District of New York
 Thurgood Marshall Courthouse
 40 Foley Square
 New York, NY 10007

Re: *In re Foreign Exchange Benchmark Rates Antitrust Litigation*
 Case No. 1:13-cv-07789-LGS

Dear Judge Schofield:

Pursuant to the Seventh Amended Civil Case Management Plan and Scheduling Order entered in this action (ECF No. 1454), Plaintiffs and Credit Suisse Securities (USA) LLC, Credit Suisse Group AG, and Credit Suisse AG (collectively, “Credit Suisse”) submit this joint status letter.

I. MOTIONS

A. Motion For Decertification

On August 31, 2022, the Court issued its opinion and order denying Credit Suisse’s motion for decertification. ECF No. 1868.

B. Pre-Trial Motions and Submissions

a. Motions *in Limine*

Motion <i>in Limine</i>	ECF No.	Status	ECF No. of Order
Plaintiffs’ Motion <i>in Limine</i> No. 1 to Exclude Percipient Witnesses from the Courtroom Unless They Are Testifying	1712	Resolved via Court-Ordered Stipulation	1790
Plaintiffs’ Motion <i>in Limine</i> No. 2 to Exclude Evidence and Argument Regarding Purported Pro-Competitive Justifications or Absence of Anticompetitive Effects	1719	Denied in Part as Moot and Otherwise Denied	1887
Plaintiffs’ Motion <i>in Limine</i> No. 3 to Exclude Evidence and Testimony About Existence of the Conspiracy and Anticompetitive Conduct Through Defense Expert Witnesses	1722	Denied in Part as Moot and Otherwise Denied	1887

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Motion in Limine	ECF No.	Status	ECF No. of Order
Plaintiffs' Motion <i>in Limine</i> No. 4 to Exclude Mention of Treble Damages or Attorneys' Fees	1728	Resolved via Court-Ordered Stipulation	1789
Plaintiffs' Motion <i>in Limine</i> No. 5 for Order that Co-Conspirator Statements Are Within the Fed. R. Evid. 801(d)(2)(E)	1733	Resolved via Court-Ordered Stipulation	1884
Plaintiffs' Motion <i>in Limine</i> No. 6 to Exclude Testimony and Argument that This Case Involves Multiple Markets	1740	Denied in Part as Moot and Otherwise Denied	1887
Plaintiffs' Motion <i>in Limine</i> No. 7 to Exclude Argument and Evidence Conflating Spread Pricing Information with "Market Color"	1747	Denied	1887
Plaintiffs' Motion <i>in Limine</i> No. 8 to Exclude Expert Testimony Regarding Intent, State of Mind or Motive	1754	Denied in Part as Moot and Otherwise Granted in Part and Denied in Part	1887
Credit Suisse Defendants' Motion <i>in Limine</i> No. 1 to Exclude Evidence of Consent Order with the New York State Department of Financial Services	1710	Granted	1880
Credit Suisse Defendants' Motion <i>in Limine</i> No. 2 to Exclude the Testimony of Persons Invoking Their Fifth Amendment Protection Against Self-Incrimination	1714	Denied	1880
Credit Suisse Defendants' Motion <i>in Limine</i> No. 3 to Exclude Evidence of Criminal Prosecutions of Non-Credit Suisse Persons and Entities	1726	Denied	1880
Credit Suisse Defendants' Motion <i>in Limine</i> No. 4 to Exclude Factual Admissions Contained in Guilty Pleas and Plea Allocutions of Non-Credit Suisse Persons and Entities	1736	Denied	1880
Credit Suisse Defendants' Motion <i>in Limine</i> No. 5 to Exclude Evidence of Non-Credit Suisse Consent Orders and Regulatory Settlements	1744	Granted in Part and Denied in Part	1880

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Motion in Limine	ECF No.	Status	ECF No. of Order
Credit Suisse Defendants' Motion in Limine No. 6 to Exclude Evidence Concerning the Board of Governors of the Federal Reserve System's Investigation of and Findings Concerning Peter Little and Michael Weston	1750	Granted	1880
Credit Suisse Defendants' Motion in Limine No. 7 to Exclude Internal Bank Policies Evidence	1758	Granted in Part and Denied in Part	1880
Credit Suisse Defendants' Motion in Limine No. 8 to Exclude Evidence Concerning Subsequent Remedial Measures	1764	Granted	1880
Credit Suisse Defendants' Motion in Limine No. 9 to Exclude Communications Without a Direct Connection to United States Commerce	1770	Denied	1880
Credit Suisse Defendants' Motion in Limine No. 10 to Exclude Other "Bad Acts" Evidence	1775	Granted in Part, and Otherwise Denied Without Prejudice	1880
Credit Suisse Defendants' Motion in Limine No. 11 to Preclude Keith Underwood from Testifying and to Exclude Reports and Statements Authored by Keith Underwood in Separate Proceedings Involving UBS AG	1779	Granted	1880

b. *Daubert* Motions

As provided for in the Court's Orders regarding the *Daubert* Motions (ECF Nos. 1701, 1886), the parties each filed a single *Daubert* motion on August 26, 2022. ECF Nos. 1846, 1855. The oppositions are due on September 14, 2022. The parties will not file replies to their respective *Daubert* motions.

c. Proposed Final Pretrial Order

As provided for in the Court's February 3, 2022 Scheduling Order (ECF No. 1653), the parties filed the proposed Joint Final Pre-Trial Order on August 26, 2022. ECF No. 1853.

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d. Trial Exhibits

Pursuant to the Court's Order dated August 24, 2022 (ECF No. 1840), on September 9, 2022, the parties will file: (1) a revised exhibit list reflecting additional exhibits that can be pre-admitted based on the parties' discussions; and (2) a joint letter reflecting the parties' respective arguments about the admissibility of up to five groups of exhibits per side.

e. Designations of Deposition Testimony

Pursuant to the Court's Order dated August 31, 2022 (ECF No. 1869), the parties will advise the Court by 12:00 p.m. two trial days in advance of their intention to present particular deposition testimony to the jury. For any deposition with disputed designations, the parties will submit for a ruling the relevant parts of the transcript marked according to the Court's Individual Rule IV.B.2.(g). The parties continue to meet and confer to narrow down disputes over designated testimony.

f. Jury Instructions and *Voir Dire*

Pursuant to the Court's Order dated August 24, 2022 (ECF No. 1840), and the Court's Individual Rule IV.B.5, the parties will file joint proposed jury instructions and *voir dire* on September 9, 2022.

g. Joint Trial Procedures Stipulation

Pursuant to the Court's Order dated August 24, 2022 (ECF No. 1840), the parties will file a proposed joint trial procedures stipulation by September 15, 2022.

II. DISCOVERY

A. Depositions

In advance of trial, the parties will conduct depositions of Credit Suisse's expert Dr. Divya Mathur, Plaintiffs' expert Dr. Hal J. Singer, and the parties' summary witnesses. To date, Credit Suisse has taken 27 depositions of the Plaintiffs and/or their investment advisors. Plaintiffs have taken 55 fact depositions, two objector depositions, and eight Rule 30(b)(6) depositions of Defendants, including Credit Suisse. Of the 55 fact depositions taken by Plaintiffs, 26 witnesses invoked the Fifth Amendment protection against self-incrimination. In addition, the parties have taken and defended 14 expert depositions.

Parties in *Allianz Glob. Invs. GmbH v. Bank of Am. Corp.*, Case No. 1:18-cv-10364, have been noticing and taking depositions. Parties in this action reached a stipulation delimiting the use of *Allianz* depositions in the trial beginning on October 11, 2022.

B. Remaining Deadlines

There are no other remaining discovery deadlines.

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III. LITIGATION CLASS NOTICE

Plaintiffs have completed disseminating notice to potential Class Members that have been identified in the records maintained by the Claims Administrator. On November 29, 2021, the Court entered an Order Approving Requests for Exclusion from the Certified Litigation Class. ECF No. 1632; *see also* ECF No. 1649.

IV. SETTLEMENT

The parties are exploring whether a resolution is possible at this time with the mediator Mr. Kenneth Feinberg.

V. NEXT JOINT STATUS LETTER

The parties will submit their next joint status letter on Friday, November 11, 2022.

Respectfully submitted,

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